

DISTRICT OF COLUMBIA
Office of the State Superintendent of Education
Office of Review & Compliance
Student Hearing Office

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Confidential

OSSE
STUDENT HEARING OFFICE
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<p>STUDENT¹, by and through parent, Petitioner, us. District of Columbia Public Schools, Respondent.</p>	<p><u>HEARING OFFICER'S DETERMINATION</u></p> <p>Counsel for Petitioner/Parent: Domiento Hill, Esq.</p> <p>Asst. Attorney General for DCPS: Kendra Berner, Esq.</p> <p><u>Impartial Hearing Officer</u> Seymour DuBow, Esq.</p>
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¹ Identifying personal information is attached to this decision as Appendix A and must be detached prior to public distribution.

PROCEDURAL BACKGROUND

On November 13, 2009, Counsel for the Parent filed the herein Complaint with the District of Columbia Office of the State Superintendent of Education (OSSE), Student Hearing Office (SHO), alleging the District of Columbia Public Schools (DCPS) denied the student a Free Appropriate Public Education (FAPE). Specifically, Counsel for the Parent alleged DCPS failed to conduct triennial re-evaluations and failed to implement the student's Maryland IEP. DCPS responded to the complaint that stated DCPS authorized independent evaluations and DCPS is providing comparable services to those on the student's Maryland IEP until the re-evaluations can be completed. A resolution meeting was held and the first issue in the complaint on triennial evaluations was resolved with DCPS authorizing independent re-evaluations.

A Pre-hearing Conference was held on December 18, 2009 and an Order was issued on that same date. The Order determined the ISSUE as set out below.

A hearing in this matter was scheduled to convene at 9 a.m. on January 21, 2010 at the Student Hearing Office, OSSE, 1150 Fifth Street, SE - First Floor, Hearing Room 5B, Washington, D.C. 20003. The hearing convened as scheduled. At the outset of the hearing, documents P-1-P-18 for the parent and documents DCPS-1-DCPS-8 were entered into evidence without objection. All witnesses were sworn in and testified under oath.

JURISDICTION

The hearing convened under Public Law 108-446, The Individuals with Disabilities Education Improvement Act of 2004, Title 34 of the Code of Federal Regulations, Part 300, and Title V of the District of Columbia Municipal Regulations.

ISSUE: 1. Did DCPS deny a Free Appropriate Public Education (FAPE) to the student by failing to implement the student's Maryland IEP?

FINDINGS of FACT:

6. The student is currently enrolled at _____ a day special education program of DCPS. The student is in a class of six students all who have speech and language impairments. He is the only blind student in the class and has a dedicated aide. The student receives nine hours a week of specialized instruction in pull-out sessions every day from a teacher of the visually impaired who instructs the student in math and language arts using Braille materials. This teacher coordinates every Monday with the classroom teacher on the week's work plan and curriculum for the student. The vision-impaired teacher uses the same Braille materials as Prince George's County, Maryland used. An educational evaluation of the student was conducted by the vision-impaired teacher on November 2, 2009. The vision-impaired teacher and evaluator used the Oregon Project for Visually Impaired and Blind Children test with the results that the student's cognitive level was at 5.1 years old. The evaluation stated: "The results reveal that [the student] is globally progressing at the readiness level and has emerging academic skills for cognition and computation. He has been provided tactile materials to supplement his cognitive development and is learning to read and write Braille effectively. Given the results of the above battery of assessments [the student] is performing at a slow rate toward academic skills and meets the criteria for an individual with multiple disabilities including blindness." (DCPS-1) She testified that the student is functioning globally at the five year old level. It was the vision-impaired teacher's professional judgment to continue to use the same pre-primer level of Braille materials taking into account his lower cognition level and his making adjustments to a new school. The student came to _____ at the pre-primer level or readiness level and is now at the primer level. The vision-impaired teacher received the more advanced "Building on Patterns" Braille materials in October, but it was her professional judgment it was too demanding for this student requiring a greater student production for him to start on in October. The "Building on Patterns" Braille materials are delineated on grade level and are on first grade level which in her opinion he was not yet ready. The "Building on Patterns" materials are used with students who are blind but without cognition delays. The vision specialist teacher testified the student has made progress on developing skills. When he came to _____ he could not count to ten and now he can count in the hundreds. In reading he has progressed from pre-primer to primer level. (Testimony of _____ The MDT Meeting Notes of October 21, 2009 indicate the vision teacher found the student improved his Braille literacy skills. (P-8)
7. The student receives orientation and mobility training twice a week at _____ The classroom teacher testified he is pulled out for forty-five minutes twice a week for orientation and mobility training, but the orientation and mobility evaluation states he is receiving two thirty minute sessions. (Testimony of _____ DCPS-2)

8. The classroom special education teacher has taken her class to the physical education teacher for the P.E. class and observed that most of her students receive adaptive P.E. and has seen the P.E. teacher work one on one with students in the gym class or at recess. (Testimony of
9. The classroom special education teacher testified the student is doing well in class and progressing academically. He is very focused on his work. He is retaining information for longer periods of time and can retell and act out stories and is quicker to answer her questions. (Testimony of

CONCLUSIONS of LAW

The hearing in this matter was convened under *IDEIA 2004* implementing regulation *34 CFR 300.507(a)*. District of Columbia Municipal Regulation *5 DCMR 3030.3* placed the burden of proof upon the petitioner/parent in this matter, and that burden is by preponderance.

The student's current IEP is from his former school in Prince George's County, Maryland. The student and his parent moved to the District of Columbia at the end of last school year and he is currently enrolled in the _____ a full-time day special education program of DCPS. *34 CFR 300.323 (f)* states:

IEPs for children who transfer from another State. If a child with a disability (who had an IEP that was in effect in a previous public agency in another State) transfers to a public agency in a new State, and enrolls in a new school within the same school year, the new public agency (in consultation with the parents) must provide the child with FAPE (including services comparable to those described in the child's IEP from the previous public agency) until the new public agency---

- (1) Conducts an evaluation pursuant to 300.304 through 300.306 (if determined to be necessary by the new public agency); and
- (2) Develops, adopts, and implements a new IEP, if appropriate, that meets the applicable requirements in 300.320 through 300.324.

Counsel for the parent argues that DCPS failed to implement the student's IEP by failing to provide certain Braille materials, by failing to provide adaptive P.E. and by failing to provide sufficient orientation and mobility related services pursuant to the IEP. Counsel for DCPS responds that DCPS has implemented the IEP pursuant to the above cited section of *IDEA*.

Based on the above Findings of Fact, this hearing officer concludes that counsel for the parent has failed to meet his burden of proof that DCPS has denied a FAPE to the student by failing to implement the student's IEP. Findings of Fact #6 shows that DCPS has provided the vision instruction required in his IEP and provided him with the Braille materials "to access and progress in his curriculum for the 2009-2010 school year." (Maryland IEP at P-11 at p.25 of 29) This hearing officer found the testimony of both the vision teacher and special education teacher very credible based on their experience and daily work with the student that he has made considerable progress in developing his skills academically. It was the professional judgment of the vision-impaired teacher to continue to use the same level of Braille literacy materials that the student's prior school in Prince George's County used based on his cognitive level and adjustment to a new school. The vision-impaired teacher had the more advanced "Building on Patterns" Braille materials in October, but felt the student was not ready for that level of materials. The evidence indicates that the student has made educational progress with the Braille materials provided as well as other adaptive materials for a visually-impaired student. (See Findings of Fact #6) Counsel for the parent has offered no proof that the student has not received the related services of adaptive P.E.. The special education teacher has observed many of her class receiving adaptive P.E. weekly with the teacher working one to one both in the P.E. class and at recess. Finally, the Maryland IEP only called for two forty-five minutes of orientation and mobility training **a month**, and DCPS is providing orientation and mobility training in at least two thirty minute sessions **a week** which is considerably more than the IEP required. DCPS has provided the child with FAPE including services comparable to those described in the child's IEP from the previous public agency. See 34 CFR 300.323 (f) The Supreme Court in *Board of Educ. of Hendrick Hudson Cent. Sch. Dist. v. Rowley*, 458 U.S. 176 (1982) held that a local school district meets IDEA's requirements to implement a student's IEP and provide FAPE where the public placement is "reasonably calculated to enable the child to receive educational benefits." *Rowley*, 458 U.S. at 207. See also *T.T. v. District of Columbia*, 2007 U.S. Dist. Lexis 52547 (July 23, 2007) In this case, the credible testimony of both the vision teacher and special education teacher show the student is receiving educational benefits pursuant to his IEP at his current placement of (See Findings of Fact #6 and #9) Counsel for the parent has not met his burden that DCPS has denied a FAPE to the student.

SUMMARY of the DECISION

In consideration of the foregoing, the hearing officer makes the following

ORDER

Counsel for the parent's request for relief is DENIED and the case is DISMISSED.

Dated this 23rd day of January 2010

/s/ Seymour DuBow

Seymour DuBow Esq., Hearing Officer

This is THE FINAL ADMINISTRATIVE DECISION. Appeal can be made to a court of competent jurisdiction within ninety (90) days of the issue date of this decision.